

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Levern Holmes,	)	C/A No. 0:13-1198-JFA-PJG
	)	
	)	
Plaintiff,	)	
	)	
v.	)	<b>REPORT AND RECOMMENDATION</b>
	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	
	)	

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This social security action is currently before the assigned United States Magistrate Judge pursuant to 42 U.S.C § 405(g) for review of a final decision of the Commissioner of the Social Security Administration (“Commissioner”). The plaintiff, Levern Holmes, (“Plaintiff”), who is represented by counsel, initiated this action and filed his Complaint on May 1, 2013. (ECF No. 1.)

The Federal Rules of Civil Procedure state that a plaintiff must serve a defendant within 120 days after the complaint is filed and, unless service is waived, must provide proof of service to the court. Fed. R. Civ. P. 4(l)(1) and 4(m). As of the date of this order, more than 120 days has passed since the plaintiff initiated this action by filing his Complaint and the plaintiff has not filed proof of service with the court nor provided completed USM-285 forms so that service can be effected by the U.S. Marshal’s Service pursuant to Rule 4(c)(3) of the Federal Rules of Civil Procedure as required by this court’s Order entered May 21, 2013. (ECF No. 8.)

The court issued an order to show cause on September 30, 2013. (ECF No. 11.) In its order, the court granted the plaintiff seven days to respond in writing and demonstrate good cause for his failure to effect service on the defendant in a timely manner. The court also specifically warned the plaintiff that if he failed to respond, this action would be recommended for dismissal pursuant to

Rule 4(m) of the Federal Rules of Civil Procedure. Notwithstanding the specific warning and instructions set forth in the court's order to show cause, the plaintiff failed to respond.

### **RECOMMENDATION**

Accordingly, the court recommends that this matter be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m).



Paige J. Gossett  
UNITED STATES MAGISTRATE JUDGE

October 22, 2013  
Columbia, South Carolina

*The parties' attention is directed to the important notice on the next page.*

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk  
United States District Court  
901 Richland Street  
Columbia, South Carolina 29201

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).